

## THE APPROPRIATIONS PROCESS

### Interview #3

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**RITCHIE:** We talked about the 1970s and ended just before the 1980 election, which was a huge turning point for the United States politically. For the first time in twenty-six years the Republican party took back the majority in the U.S. Senate. You had been working on the minority staff on the Appropriations Committee with Senator Hatfield. Did you have any inkling at all that you'd be the majority after that election?

**KENNEDY:** No, I don't think anybody did. It was a long and tumultuous election eve. Everybody went off to various election-eve parties. Most people went to bed at an early enough hour that the outcome was not yet decided, but certainly within the next couple of days it was clear that the Republicans got the majority in the Senate.

**RITCHIE:** A lot of Democrats like Warren Magnuson and Frank Church, who had been in the Senate for a long time, went down to defeat that election. So, suddenly, the Republicans were in the majority and Senator Hatfield was slated to chair the Appropriations Committee. When did you find out what he had in mind for you?

**KENNEDY:** Actually, it took a while. He didn't say anything right away. It was a matter of some weeks actually. He had been the senior Republican on the Energy Committee in '79 and '80 and by virtue of that he had a minority staff director and other staff on the committee. It was frankly unclear whether he was going to ask that fellow to come to Appropriations or what he was going to do. But ultimately it just kind of turned out that he asked me to do it. My recollection is when the issue finally surfaced between the two of us and I sort of asked him what he wanted to do, his response was "Well, you're already there." He took the attitude of, "Well, of course that's the way it's going to be." But he himself never said it. I won't say it was typical but I'll say that he often practiced sort of indirection to get where he wanted to wind up.

**RITCHIE:** You went from being a minority staff member on the subcommittee to being the staff director for the whole committee. I wondered if you could talk about the committee as a whole. What's the difference between being on a subcommittee staff and being staff director of the full committee?

**KENNEDY:** It's a very different situation. Certainly on Appropriations, I can't speak to other committee arrangements, but the work of the Appropriations Committee is done in its thirteen subcommittees. That's where the policy and budget expertise resides, in the professional staff of those subcommittees. It is, certainly at the time and I think continues to be, a very bipartisan, almost non-partisan committee. I think we've said previously in these interviews that it's always been my view that it's been very difficult to get into an impassioned political, ideological argument over whether the funding level for something ought to be ten or eight million dollars. The committee is making thousands of those decisions every year and they just tend to be worked out in a bipartisan fashion. The bulk of that work is being done there at the subcommittee level by the subcommittee staff, majority and minority, and by the chairman and the ranking member.

The full committee and the role of the chairman of the full committee and his staff director and immediate people in that front-office operation is really very much process oriented, to make every effort to make sure that the subcommittees have what they need to do their work and produce those bills in a timely, predictable, orderly manner. That's the sort of internal responsibility, if you will, of the full committee staff. Externally, the role of the staff director involves a lot of communication and interaction with the Senate leadership as to what their plans are for the appropriations process, counterparts in the House and the administration, primarily OMB [Office of Management and Budget], and the White House liaison people about the desires of the administration, and how differences get negotiated. Subcommittees by and large don't need to worry about that stuff too much. They need to be concerned about the actions and activities of their House counterparts certainly, what kind of bill they are producing. But some of the overarching—how do all thirteen pieces fit together as a whole?—that's a full committee responsibility. And I forgot to mention the full committee dealings with Budget Committee and how that process will influence the appropriations process.

**RITCHIE:** Now the Budget Committee was a relatively new player at that point. It had been created in the mid 1970s and hadn't really developed into its modern role until about the time you got to be staff director.

**KENNEDY:** Well, if you look at the late '70s and there are some watershed events with Senator [Edmund] Muskie as chairman, with votes on the Senate floor that really tested whether or not the Budget Committee was going to stand for budget

discipline or whether it would be swayed as other members of the Senate were by the political consequences of votes. My recollection is that votes on child nutrition or food stamp programs, things that ordinarily Senator Muskie would have been very much in favor of and that he opposed and they were defeated because the Budget Committee raised objections in the name of enforcing the budget resolution. So it was beginning to show some muscle, but of course it wasn't until Senators [Pete] Domenici and Baker and OMB Director [David] Stockman, and other folks sat down in the wake of that '80 election and figured out a way to use the reconciliation process to do things for the budget that the Reagan administration wanted to see done, that it really started to flex its muscle. That was the first time, I think, that the Senate leadership really put all its chips in that one basket. The budget resolution from that time on really became a vehicle for the leadership, and the budget resolution became a test of party loyalty: This is what we need to do to support the president or establish our identity as a party.

**RITCHIE:** Did that clip the wings of the Appropriations Committee a bit?

**KENNEDY:** I don't really think so. Certainly there was a lot of grumbling and a lot of chaffing under this new regime and a lot of discussion about the validity of using outlay estimates as a measurement of fiscal performance rather than in our view the more accurate and more readily accountable count-up-our-budget authority. That's not an estimate, you can count it, it's there. There was a whole lot of back and forth about that, but the Appropriations Committee had always prided itself in appropriating less money than any president requested in his budget. It had a long and storied history of that, and every year we would print another chart in the *Record* and say, "See!"

So, I think a lot of the grumbling about the budget process, focusing on those nasty old appropriators, was misplaced criticism. Indeed, everybody knew this. All the budget cognoscenti knew that the real problem, if you were concerned about the growth of federal spending, was not with annual discretionary appropriations but with entitlement programs. That was plain for anyone to see. The problem was, of course, you couldn't do anything without entitlement programs without enacting a law. Whereas you could do something about an appropriations bill by vetoing it. Brother Stockman and I had this conversation on more than one occasion and he was quite candid about that, saying "I know that the appropriations process is not the problem but I can slow you guys down with one third plus one of one house to sustain a veto."

There was grumbling and chaffing but I think in the final result it really didn't change much of the outcome. The Appropriations Committee continued to appropriate less money than the President had asked for, but the Budget Committee, and the budget resolution process, gained more legitimacy and vigor. I think Congress chose to ascribe to that process that this is how we achieve fiscal discipline. And if it weren't for this, these people would run amuck. But I don't think that's the case.

**RITCHIE:** So essentially what it did was put a cap on what each of the thirteen subcommittees could appropriate? They can still decide where the money goes within that cap but that they can't exceed the cap.

**KENNEDY:** Right.

**RITCHIE:** Could you explain, especially for somebody who is outside the institution and puzzled about it, exactly what the reconciliation process was and how it affected the appropriations?

**KENNEDY:** Well, of course, you'll have to get people like Steve Bell and Bill Hoagland in here to talk about that, but, oh goodness, the Budget Act of '74 specified a certain process for the congressional budget resolution. In the spring of any year there was to be a first budget resolution that would create functional totals for all federal programs, and sort of an overall maximum amount of federal spending, estimate of revenues, and estimate of the deficit. In the wake of the adoption of the conference report on that budget resolution, committees were to be given an allocation based on the assumptions of that budget resolution.

The Appropriations Committee would get a pot of money, and the Appropriations Committee was then supposed to allocate those funds to its thirteen subcommittees, proceed on its merry way, and get all the appropriation bills done by early September. Then, if I remember right, on or about September 15 there was supposed to be a second budget resolution, which would take all of that into account and establish final numbers. If for some reason subsequent to that the numbers were judged to be out of wack, then that second resolution could contain instructions to Senate committees to reconcile all those actions between the first and then the second one to a certain number. "You've done all this. We'd rather you were here. So report out legislation that would change

stuff you've already done so we can get to here. And, oh, by the way, the legislation that you produce in response to that reconciliation instructions is going to be subject to certain limitations on debate."

So the '74 Act established this reconciliation process as a retrospective look back and see where you may have gone wrong to try and fix it. What was revolutionary about the '81 process is that the leadership and the administration looked at the debate limitations entailed in reconciliation and said. "Aha, this is how we can push through up front a lot of the changes that the administration would have us make in the budget, and we can do so without worrying about filibusters and any number of things that would otherwise pertain in the Senate." Senator Hatfield and others—but he as chairman of the Appropriations Committee perhaps most vocally—protested this, saying that it was a prospective use of reconciliation, and was an abuse of the process. He made his point and he lost. It has been that way ever since in that reconciliation, if it is used, it flows from reconciliation instructions included in the first budget resolution, and in fact I think in all the subsequent rewrites of the Budget Act a second budget resolution has just gone away. I don't know that there is such a thing. It's certainly never used in practice.

**RITCHIE:** It's a case in which the Senate has accepted almost a rules change by statute in a sense, by the reconciliation providing how things can be expedited and suspending the usual rules. It's an interesting tool that they handed to themselves.

**KENNEDY:** If you go back and look at the report on the legislation that eventually became the Budget Act, it got reported from both what was then called the Government Operations and the Rules Committee. Senator [Robert C.] Byrd among others was among those who worked on legislation. If you look at the report and the debate in '74, and then the debate in '81 when this reconciliation was used in this new way. I think particularly for people like Senator Byrd, in '81 they were saying, "Whoa, we never dreamed that this is the way this could be used." I think, if I recollect right, there was a series of parliamentary questions that got raised with the Parliamentarian at the time on the floor, and he rendered an opinion one way. It wasn't necessarily a unanimous view.

**RITCHIE:** Do you think that the use of reconciliation was inspired primarily by the Republican leadership and the new chairman of the Budget Committee or by the

White House? Were they informing the White House that this was a good way to do it, or was the White House taking the lead in suggesting that they could change their policies?

**KENNEDY:** Well, success has many fathers. I think there are a number of people who now claim the idea that might not have at the time. I honestly cannot tell you who conceived of this originally. Stockman makes reference to it in his book, someone tumbling upon the idea.

**RITCHIE:** What was your impression of David Stockman and the role that he played at that time?

**KENNEDY:** I guess like a lot of folks I viewed him as brash, and cocky, and arrogant. But the more I was exposed to him, the more I respected him, and indeed came to like him. He was definitely a smart fellow who knew his stuff. He did his homework, and he was unlike other OMB directors that had popped up in front of the Appropriations Committee. He was very active, and certainly unafraid of contention, and he was clever. One of my classic stories about Stockman was every year in those first six years of Mark Hatfield's chairmanship when the president's budget came up we would have so-called budget overview hearings. The full committee would be invited to come, and Stockman would always be a principal witness. Invariably this was a forum for senators to come in and complain about some particular proposal of the administration that did harm to their constituents. The committee, then as now, is a very large committee, a lot of members, and Senator Hatfield had to run everybody on a clock to give everybody some time to ask questions.

Senators always tend to burn up their own time with lengthy statements about the outrages that Stockman was perpetrating. One of the perennial program changes that the Reagan administration recommended was a reduction in what they called subsidies for urban mass transit. This, of course, was particularly painful for people like Senator [Alphonse] D'Amato from New York. At the occasion of one of these hearings, it was Senator D'Amato's turn and he just lit into OMB, and David Stockman, and the administration, and anybody who would dare dream of reducing this federal subsidy for mass transit. When he was done and it was time for Stockman to respond, he simply said, "Well, Senator, I see no reason why the people of North Dakota," pointing at Mark Andrews, "or Idaho," pointing at Jim McClure, and just went around and picked out

people from more rural states who did not have a lot of mass transit to speak of, “I see no reason why their constituents should subsidize the fare box price of people in Manhattan.” D’Amato just went through the roof and Stockman just sat there. Sure enough, by the time D’Amato was through fulminating the red light had gone on and he was out of time. Stockman had only said one sentence. So he was good about that. I think people were sorry when he was gone. He had his “woodshed moment” back in ‘81, and people got mad at him, but he did a good job and they were sorry he left.

**RITCHIE:** On an on-going basis, what is the relationship between the OMB and the Appropriations Committee? Is it a regular contact? Does OMB take the lead, or are they providing information?

**KENNEDY:** Yes, they are providing a lot of information and putting stakes in the ground all the way through the process. I think it was the Stockman OMB that started this “statement of administration policy” process where at every step along the way in the appropriations process there is a letter from the OMB director to the House subcommittee chairman and ranking member about their product as it comes out the subcommittee, and on, and on, and on. So that if the bill moving in its orderly way from House subcommittee to full committee to House floor to Senate subcommittee, full committee, to Senate floor, all along the way you have these wickets that the administration establishes about, “This is what you’ve done that we like, and this is what you’ve done that we don’t like, and we want you to change this.” And you may eventually get, towards the end of that process, a letter that says that “We really don’t like this, and if it stays in the President’s senior advisors would recommend a veto.”

All the way through that process of paper correspondence there are ongoing conversations, negotiating, people trying to figure out which of these eighteen paragraphs of objections are the ones they really care about. It varies from administration to administration, and director to director, and chief of staff to chief of staff, whether or not the real focus of this is the OMB director or is it somewhere else in the administration. When Leon Panetta was President Clinton’s chief of staff, when it got down to the last serious parts of the process he was the one at the table. Here recently, when it’s gotten down to the last little bits of serious business, lo and behold it’s the vice president that pops up. But in the day-to-day grind it is very much the people at OMB.

**RITCHIE:** So if it's somebody from outside of OMB, is there more political clout behind it?

**KENNEDY:** Well, again, it depends on who the director is. When it was Stockman, he was the guy, even after the woodshed incident Stockman was the guy. In a rare instance in those days, Jim Baker might pop up. If it is clear that the President has vested full faith and authority in his own OMB director, he can handle the political stuff too. But, yes, I suppose generally speaking if it's someone outside the OMB director, it's probably got a little more political tint to it.

**RITCHIE:** So in other words, when the vice president shows up and says, "We'll veto this," then you know that they'll veto it.

**KENNEDY:** Oh, indeed.

**RITCHIE:** But in other cases, it's a game of chicken, isn't it? To see how far one side can get before the other side blinks?

**KENNEDY:** Yes, and from time to time administrations will do something to establish their credibility. There was a continuing resolution in late '82, it might have been at the end of '81, but anyway it was early in the Reagan years, and there was a little confab in Senator Howard Baker's office with Senator Baker, and Senator Hatfield, and Senator Dole as chairman of Finance, Senator Domenici as chairman of Budget, and David Stockman, and Jim Baker, and Paul Laxalt, who was the president's man in the Senate. Stockman and Baker sat there and said, "Don't send this thing to us, we'll veto it." And people said, "Nah, you don't really know." They said, "Don't send it to us, we will veto it." Well, if you veto it the government is going to be closed. "You'll generate something new to reopen so that is doesn't stay closed."

This measure had already passed the House and so it was a matter for the Senate to decide. Senator Baker decided, "Well, we're not just going to do nothing. We're going to act on this, and we'll see what the President does." It was sent to him and he vetoed it. We immediately cranked up some new vehicle. There was a time in the first Clinton administration, back then, I want to say it was in '95, when the phone rang one day and it was Pat Griffin, the head of legislative liaison for the White House, saying

“Don’t send us that legislative branch appropriations bill, we’ll veto it.” Well, why in the world would you do that? It’s just our business, not that much money. He says, “Well, we’re not going to sign yours until you treat us better in ours, meaning the Treasury appropriations bill, which includes the funding for the immediate office of the president, and OMB, and other things. We didn’t believe him, and it was sent to the White House, and he vetoed it. There was all sorts of outrage over a breach of comity between branches, but there was never any attempt to override the veto.

**RITCHIE:** We shut down for a week, speaking as a nonessential employee.

**KENNEDY:** [Laughs] So, over time, I think people have learned that, “Yeah, they do mean it.” At least in the past ten years I haven’t seen any exercises of, “Oh, let’s send it down there and let’s see if he really means it.”

**RITCHIE:** In this case, you were the same party as the president and the OMB, but in the cases when the opposition party holds the White House, does that change the relationship with the OMB?

**KENNEDY:** Actually it often makes it easier.

**RITCHIE:** Oh, okay.

**KENNEDY:** When I was minority staff director during the first Bush administration, Bush 41, there was an attitude at OMB that the role in life of the Republicans on the Appropriations Committee was to do what the administration told them to. The Republicans on the committee didn’t necessarily see it that way. I think you see that now with this administration and with Republican majorities in both House and Senate, there is considerable resentment that the administration treats folks in general, and the appropriations process in particular, as “You’re supposed to do this because that’s the way the president wants it.” It’s almost as though this was a parliamentary system. Folks don’t like that.

It’s always sort of struck me, for a long time, that things can actually be more difficult when you are dealing with folks in the same party, because there are these

expectations of “we are all supposed to agree,” and you get into these who’s-ideologically-more-pure conversations. When you are dealing with the loyal opposition you don’t come with that baggage. You recognize that there has to be some sort of negotiated agreement. Speaking personally, it was easier for me in the ‘80s to deal with my counterparts in the House working for Mr. Whitten than it was for me in the ‘90s to deal with my Republican majority friends in ‘95 and ‘96.

**RITCHIE:** You bring up a good point in that the relationship between the House and the Senate is critical with appropriations. The House has always interpreted the Constitution to suggest that appropriations should always begin in the House and then go to the Senate. Did they also feel that the Senate should be following not just in chronology but also following the leadership that the House has exerted on appropriations?

**KENNEDY:** Oh certainly. I think that that feeling has waned somewhat in the past twenty years, but certainly in the late ‘70s, early ‘80s, when I first became acquainted with the process, there was definitely an expectation on the part of the House that the Senate would pretty much go along with what the House had recommended. The House had the attitude of, “We pay better attention. Our members are only focused on appropriations, that’s all they do. We know the details. We’ll send you the bills, you make the adjustments you think are necessary, but don’t mess them up too much.” Indeed, that’s pretty much the way the process worked, as we’ve talked before.

When I got to know the appropriations process, the House would pass and send to the Senate a bill, and the Appropriations Committee would recommend amendments to that bill. Individual, discreet amendments. In so doing, the committee would recommend leaving much of the House bill intact, just the way the House passed it. You just make individual changes. You then went to conference with the House and you only talked about those changes. All those things the House had recommended that you didn’t touch were just fine. Now, of course, that’s not the process that’s followed. The House bill comes over and a complete substitute is adopted for it. I sort of lost my thread here, but that earlier process was clearly geared to: “Yeah, the House has done a lot of work on this and we are happy to take what they recommended, with these following exceptions.”

**RITCHIE:** I wondered if as the staff director for the committee does the fact that

your schedule is determined in part by what the House does and when it does it, does that complicate matters in terms of trying to project your schedule on the Senate side?

**KENNEDY:** Well, sure it did. It's become much more complicated now than it was when I first had the job in the early '80s. The House marched along at its accustomed pace on appropriations bills. Bills would get sent to the Senate, we'd mark them up and report them out. Sure, it would take longer than it was supposed to, but nonetheless every year we would see thirteen bills come to the Senate, and we would report out thirteen bills. We could afford to wait in those days and do it in that orderly way. Plus no one had yet dreamed up this notion of "Oh, we'll just take the House bill and just do a complete substitute to it," because everybody was still thinking that if you do that you're bound to have Rule XVI point of order against the substitute, and House Rules will never grant the rule necessary for the conference report, and all this complicated procedure stuff that in recent years has been just kind of swept aside.

In those days, and indeed on into the '90s, it was not really a problem to wait for the House bill. It was a reasonably predictable schedule. I could go over to House Appropriations, and every year the first thing they did was make a calendar that hung on one wall of their full committee room over there, and it was laid out like clockwork: On this day will have subcommittee mark-up on this bill, and this will be full committee, and two days later we'll have it on the floor. And it worked that way. It doesn't work that way anymore. Now I think it is far more problematic for the staff director of Appropriations to try to plan a schedule. In fact, you now see the Senate Appropriations Committee originating its own bills to save a little time, shave some time off that schedule, have that Senate original bill waiting when the House bill comes over.

**RITCHIE:** Was there ever any impetus for that early on in the '80s, when people talked about doing that?

**KENNEDY:** Oh, yes, in fact we did it once with a foreign operations appropriations bill. We reported it out, and I think it actually took a third reading on the Senate floor. There were many who were shocked and appalled that we would do such a thing. Of course, our brethren in the House told us, "In the end that's all well and good, but if you so much as dare to pass it and send it to us we won't let it in the door. You're not doing yourselves any good."

**RITCHIE:** I wondered about Senator Hatfield as chair at that stage, when he was taking over the committee. The Reagan administration was several steps to the right of him and a number of other Republican senators were much more conservative. He'd always been an independent-minded person. How did that play out in his role as chairman of the Appropriations Committee? Did he feel any pressures from the conservative wing of his party or did he steer his own course?

**KENNEDY:** No, the differences were certainly there, but the pressure was not. I think folks knew his position, they respected his reasons for it. He did not ever try to use his chairmanship, his gavel, to impose his position on anybody. As everyone well knew, he was very much against the kinds of things that the president was recommending in the defense budget. In theory he could have just refused to have a mark-up on the defense bill. The one real power the chairman has, and perhaps the only power, is to set the agenda and call the meeting. He could have refused to have a committee mark-up on a defense appropriations bill with which he strongly disagreed, but he didn't do that. He was respectful of the institution's obligation to deal with this. So because he treated the institution and other Senators with respect, they afforded the same back to him.

Where there were disagreements, there were disagreements. There were disagreements on the MX missile, there were disagreements on chemical weapons. There were occasions when his vote and that of fourteen Democrats made the difference and produced the recommendations from the Appropriations Committee that got reversed by the Republican majority on the Senate floor. But again, that was fine, that's the process. We vote and we see how it comes out.

**RITCHIE:** I can imagine that everybody in Washington wants to talk to the chairman of the Appropriations Committee at sometime or another. By definition he's an extremely important person in the whole process. Was part of the role of the staff director and the staff to be a line of defense for the chairman?

**KENNEDY:** Sure, and there were a lot of people who got steered our way that originally had sought to seek the chairman, "He can't do that, but you can go and see these people." We saw a lot of petitioners, but I think also just as most of the work of the Appropriations Committee goes on in the subcommittees, most of the petitioners go to the subcommittees too. The entire appropriations process is one of working at the

margins. The farther along you go in the process, the narrower the margin you're working on. Year in and year out, I bet you Congress doesn't alter more than seven percent of what the president proposes. In the traditional process, where it comes first through the House and then to the Senate, by the time it gets to the Senate full committee you're down to the real minute tweakings. If you want to try and do something in the Senate Appropriations Committee, you'd better try to do it in the subcommittee because the full committee ninety-nine percent of the time is going to ratify what the subcommittee recommends.

Senator Hatfield was not a very top-down kind of chairman. He didn't seek to impose his own particular view of the world on the rest of the subcommittees. He would be moved to make recommendations, and subcommittee chairman would do what they could to accommodate him, but he didn't attempt to dictate things to his subcommittee chairman colleagues.

**RITCHIE:** The Democrats had been subcommittee chairmen for years. Every single subcommittee chairman when Hatfield took over was a brand new subcommittee chairman. The only Republican who had been in the majority before that was Barry Goldwater. So everybody was for the first time stepping into the majority. Did that create any problems with your thirteen brand-new subcommittee chairs?

**KENNEDY:** Well, it did. I was telling this tale the other day. My recollection is that in the Congress that ended in 1980, the Appropriations Committee was comprised of seventeen Democrats and eleven Republicans. Of the seventeen Democrats, fourteen of them survived into the next Congress, and as much as Mark Hatfield wanted to reduce the size of the Appropriations Committee—he said it's just too many people, just too unwieldy—the Democrats felt just as strongly that they didn't want to have anybody get bumped off the Appropriations Committee. And frankly, the longer Senator Hatfield thought about it, he said, "Well, you know, we might want to have some of these guys."

The upshot of all that was that the new Appropriations Committee in that Congress was—I hope I've got this right—fourteen Democrats and fifteen Republicans. Of those fifteen Republicans, seven were brand new to the Senate, and those seven plus Thad Cochran were brand new to the committee, and of those eight who were brand new, five of them were suddenly subcommittee chairman. It's just a walk-in-the-door-and-here's-

your-gavel kind of thing. Yes, there were some pick-ups along the way. Senator [Matt] Mattingly, fresh from Georgia, became chairman of the legislative branch appropriations subcommittee. In the first bill he produced for subcommittee mark-up in the summer of '81, he lost every proposal that he offered to the subcommittee on a four-to-one vote. His two Republican colleagues joined the two Democrats on it, and said, "No, we're not going to do that." But everybody got through it.

We shouldn't pass over this part of the conversation without my saying that when Senator Hatfield became chairman he went out of his way to try to keep as many incumbent staff people as he could. There were certainly people who had worked for Chairman Magnuson who left in wake of his defeat. There were people who worked on the Democratic side of the aisle who didn't want to work for a Republican majority and happily went to—well, not happily but went to a minority staff position even though we asked them to stay with the majority staff. He really made an effort to retain what he viewed as a professional staff for the committee, without regard to what their political affiliation might be, and who they might have worked for in the previous Congress. That, I think, helped with these newer chairmen. There was good institutional memory and knowledge of process that helped get rookies through their first year. It certainly helped me having those people around.

**RITCHIE:** Your predecessor, Featherstone Reid, had only one calling card which said "Assistant to Senator Magnuson." He used that for whatever job he did for Senator Magnuson over the years. Did he brief you at all or did you get any kind of passing of the torch from him?

**KENNEDY:** No, not really. You know, Feather's role with the committee was always kind of undefined. Yes, he had the one card and everybody knew that he spoke for the chairman, and that he was very close to Senator Magnuson. But on the staff, the guy that was viewed as sort of the Appropriations clerk, if you will, was Terry Lierman, who did the Labor-Health bill for Magnuson. Between the two of them, it was never quite clear who was doing what. You're right, Feather never ascribed to himself the title of staff director, but he never ascribed it to anybody else either. So it was a little murky there. There was not a torch pass.

**RITCHIE:** What about the Democratic senators on the committee at that stage? You mentioned that there was a lot of continuity, even though their ranks had grown

smaller. How gracefully did they make the transition from majority to minority?

**KENNEDY:** Well, they did rather well, is my recollection. Again, the nature of the committee being what it was, they came to realize fairly quickly that “Okay, we don’t have the gavel anymore, but it’s not like we’re going to be disenfranchised.” Then as now you had some very senior people on the committee. Senator [John] Stennis was the most senior, but he elected in ‘81 and ‘82 to remain the ranking Democrat on Armed Services, and allow Bill Proxmire to be ranking Democrat on Appropriations. He changed his mind two years later and bumped Senator Proxmire. But in that first Congress it was Proxmire, and then Stennis, and then Byrd, and then [Daniel] Inouye, and [Ernest] Hollings. Byrd, Inouye, and Hollings are all still there, and then on down the line, people like Bennett Johnston, Jim Sasser, Dee Hudleston. Dale Bumpers, I think, was the most junior Democratic member of the committee. None of them particularly ideological, none of them particularly partisan. All of them respected and liked Mark Hatfield, and it all seemed to work.

**RITCHIE:** Senator Proxmire had a reputation of being a maverick. He did that all- night filibuster in ‘81 on the raising of the debt ceiling, and things like that. Was he a person who required a whole extra care and handling?

**KENNEDY:** No, actually there was a time there in those first months and years when I recommended to Mark Hatfield that he not appoint to the conference committee any member of the committee that voted against the bill. I mean, what is this? You just shouldn’t have committee members voting against the bill. And Senator Proxmire made it a fairly regular practice to vote against certain appropriation bills. As a matter of fact, so did Mark Hatfield. He always voted against defense appropriations. But we were willing to make an exception for the chairman. This was only done once or twice when Proxmire voted against something and Hatfield didn’t put him on the conferees’ list. Proxmire was shocked that this would happen to him and cooler heads prevailed, and we all got along, but there were little deviations like that. But again, Proxmire was not out to blow up the process for the sake of maintaining his position, let him do his thing and move on.

**RITCHIE:** Could you talk a little bit about the conference committees in the beginning? You had a Republican majority in the Senate, and a Democratic majority in

the House, and you had a Republican president's agenda that was somewhat controversial at the time. How did the conferences work?

**KENNEDY:** Early on they had their moments of being rather fractious, because I think there was a sense in the House of, "Who are these people? Upstarts. Do they really know what they're doing?" Of course, when you got into the conference the old-line Democratic majority in the House could start speaking to their chorus of Senate Democrats on the Appropriations Committee, and they would reinforce one another. That was a stage in which I think we were glad that we had the administration with us, because it was clear that President Reagan was enjoying considerable political influence, and it was clear that his administration meant what it said, and was willing to demonstrate that. The raw recruits of the Republican majority had a very strong ally in the administration.

**RITCHIE:** When you're in a conference like that, what's most important? Is it keeping the majority party together, being able to vote as a group on things? Or can individual senators sway decisions on some of the sections of a conference report?

**KENNEDY:** It can happen. It doesn't happen often, but having said that I wouldn't say that what's important is keeping the majority together. What's important is keeping the Senate together, because ostensibly you're there representing the position that the Senate has taken. It wasn't that hard to do. For all the individual decisions that get made, there are just a very, very small percentage of decisions that get made on a vote, or show of hands, or where your people are counted. Mainly it's just that the chairman and the other people speaking to the issue on the Senate side saying, "Well, that's our position. You guys have to deal with it. If you guys don't like it, make us a proposal."

**RITCHIE:** Does the Senate have some advantage in the fact that its rules don't really permit the majority to get its way automatically, and that therefore there is more of a need for accommodation on the Senate side than on the House side?

**KENNEDY:** Yes, and that's something the House cannot comprehend. That became a real difficult issue in '95 and '96, when we'd go to conference with Senate bills that were the product of the Senate, which means both sides of the aisle, and the House conferees would just say no. "We don't care, that's not our position. We don't agree

with what you've done. We're unified. We're not negotiating." It was a very difficult time.

**RITCHIE:** And yet if they wanted to pass a bill they had to get it through the Senate.

**KENNEDY:** Right, and get the president to sign it.

**RITCHIE:** Tell me how much does the individual personality of a chairman affect something like the conference committee? Is part of it who's sitting in the seat and the relationships that he's developed, and the style that he has?

**KENNEDY:** Oh, sure absolutely, and that's true not just who happens to be chair, that's true of all the personalities in the room. I think I enjoyed conferences most of all just because of that, and because of the play of personalities, and the theatrics of it all. People throwing what you knew were staged tantrums for effect. People making personal pleas.

I remember one time in the '80s when Senator Stennis—this would've been '81 or '82 because I don't believe he was ranking yet—but anyway we were in a conference and the issue was a matter within the jurisdiction of the VA-HUD subcommittee, and Eddie Boland of Massachusetts was the chairman of the House subcommittee, and had been forever, and was an institution on the Appropriations Committee, just flinty and hard nosed. Senator Stennis was appealing some case on a housing issue, and Mr. Boland kept sitting there and saying, "Senator, I'm sorry, we'll work with you in any way we can, but we're not going to put in essence some sort of earmark into this bill for that purpose." In those days, there were indeed House chairmen who opposed earmarks, Boland being one of them. At one point, Stennis said, "Well what am I going to do? They won't even return my phone calls." And everybody went. "Oh, now that's just not right." Boland said, "You're right, that's outrageous. We'll put it in here." Okay, we just can't treat John Stennis that way. So there are moments like that that are well worth the price of admission.

There is another that has always been one of my favorite stories of life in the Senate. It speaks to what can happen in conference between the House and the Senate. In

1983, as part of the economic stimulus package that was proposed by the Reagan administration, the Senate in consideration of that bill added a provision, sponsored by Senator [Arlen] Specter and Senator [John] Heinz, that had the effect of advancing the fourth-quarter payment of Revenue Sharing (which was still in existence at the time) into the third quarter, giving states double the amount of money that much sooner. Senator Hatfield was a long-term opponent of Revenue Sharing, and the Reagan administration was in opposition to the amendment, but it nevertheless passed by a considerable margin, seventy to thirty or something like that. Subsequent to passage, there was a meeting in Senator Baker's office with Dave Stockman and Jim Baker, to talk about how the conference would proceed and how the administration felt about the Senate product. Stockman was adamant that this Revenue Sharing provision had to be taken out of the bill. Senator Hatfield readily agreed. He said, "Absolutely, that's got to go." I was sitting there thinking: It was adopted seventy to thirty!

In the due course of time, we got to conference with the House, and we got to that particular amendment in the Senate bill. Almost as soon as we got on it, Eddie Boland, the chairman of the House subcommittee that had jurisdiction over the matter, said, "Well, the House is willing to take the Senate amendment." Senator Hatfield said, "Wait a minute, we haven't offered it to you yet." Which was sort of an unusual circumstance, because it was, after all, the Senate position. And indeed the members of the House said, "But the Senate passed it." Senator Hatfield said, "Well, the Senate on reconsideration may not want to propose that to you." And indeed on a show of hands of the Senate conferees, the Senate receded from its own amendment.

Senator Specter, one of the sponsors of the amendment, was sitting in the room when this happened, and he was somewhat nonplused. When the conference report on this measure came back to the Senate floor, there was a somewhat testy exchange between Senator Specter and Chairman Hatfield about what had transpired. My recollection is that it was not late at night but it was in the evening. There was considerable attendance in the body because this was sort of: If we wrap this up, then we can leave. So there were a lot of people there who had heard this exchange between Specter and Hatfield, one of whom was John Stennis, who was the ranking Democrat on the committee at the time. Senator Stennis sought and got recognition, and stood up and told this wonderful story. He talked about how he had been in the Senate for a long time, and he had been to a lot of these conferences. He said, "You know, there were times

when you could walk into one of these conferences and you could *see* it. You could *see it in their eyes*, it's just not going to happen." He said, "This was one of those times. I walked in and looked at the members of the House sitting across the table, and I *knew* this amendment was just *dead as Hector!*" This was getting people's attention. People were beginning to chuckle about this.

Then he told the story that is the classic story about the conference. He said, "I remember one time when a junior member got an amendment adopted to an appropriations bill when Senator [Carl] Hayden was chairman. The bill went to conference, and the conference report came back out on the Senate floor, and the senator's provision was not included in the conference report. So he came up to the chairman and said, "Excuse me, Mr. Chairman, but what happened to my amendment?" Hayden looked at the senator and said, "Well, the House wouldn't take it." The senator said to Mr. Chairman Hayden, "Well, why not?" Hayden looked at him and said, "They didn't say." It absolutely brought the house down, but it is the perfect distillation of what can happen in conference. Stennis' last words were: "Sometimes they just don't say." That defused the whole atmosphere in the chamber, and the Senate voted, and everything went along. But virtually since the first few days after those words were spoken on the Senate floor, I've had them hanging on my wall somewhere. It's a very useful thing to point to these days in the lobbying business because you can say to clients, "Sometimes they just don't say."

**RITCHIE:** That's a wonderful story. I can just hear Stennis saying that.

**KENNEDY:** It was marvelous.

**RITCHIE:** You mentioned earmarking. Is that a trend that has increased since 1980 or was it pretty well in place in 1980?

**KENNEDY:** Earmarking has always been with us, and there is absolutely nothing inherently wrong with it. It is Congress making the recommendation that is at variance with that which the administration has proposed. Fine, that's what Congress is supposed to do. If the Congress doesn't earmark money, the administration will. This is all a question of who decides how things get allocated. It's not as though this is some sort of benign automatic process where if you just leave it alone it's all going to get done

automatically. But the practice of earmarking has just kind of gotten way out of hand. It's just mushroomed completely out of proportion. If you looked at the conference report on the Omnibus that the Congress passed earlier this year, the level is just staggering. They're earmarking twelve thousand dollar grants. It's just preposterous. And the staff is getting overwhelmed by all of this, and the appropriations process is falling into greater and greater ill repute, in my view, as being nothing more than a vehicle for this kind of thing.

**RITCHIE:** Do you have any explanations as to why it's gotten so out of hand?

**KENNEDY:** Well, I could probably cook up several, but I don't think I will.

**RITCHIE:** Do you think this is inevitable? In other words, this is the way the legislative branch is going to go. It's going to be much more specific in its dealings with the executive branch, instead of giving discretion to the administration?

**KENNEDY:** It depends entirely of course upon the attitude of the administration your dealing with. One explanation perhaps of its exponential growth in recent years is that you had a Republican majority in Congress and a Democratic president. The majority felt that, "If we don't do this, they won't do what we want. So we have to put in a whole lot of earmarks." But that explanation quickly falls apart when you get to 2001 and you've got Republican majority in both houses and a Republican president, and it's gotten steadily worse. When Mitch Daniels was OMB director at the beginning of this Bush administration, he got about this close, I thought, to the position of saying, "We don't care, it's report language, it's not law, and we're not going to do it." I would not have blamed him if he had, because technically he's absolutely right. I think it may take that sort of attitude to bring it to heel.

**RITCHIE:** Of course, the only trouble is that they'll have another appropriations the next year and they'll have to face a lot of angry people.

**KENNEDY:** Well, that's true, but if you know you're willing to ride it out I think ultimately you can win that argument, and get back to a "we've all have to get along here" attitude. The reason why it's all report language is because nobody ever wanted to write this degree of specificity into black letter law. To me, it's just sort of implicit in

that there is a recognition that we've all got to get along and be flexible, and adjust to changing circumstances, and maybe it will turn out this way and maybe it won't. But more and more and more that you identify these hundreds of specific earmarks, the more you are getting away from that flexibility. All of us have to work together to make this happen.

**RITCHIE:** The newspapers like to describe all of this as pork, and it has a pejorative connotation, but do members use the appropriations process as a way of establishing that they can bring back funds to their state? That there are specific projects that say this is mine, this is what I did for you?

**KENNEDY:** Sure, no doubt about it.

**RITCHIE:** And do you see anything wrong with that process?

**KENNEDY:** No, none whatsoever. All of us could make individual assessments of individual projects as to whether or not we think they are meritorious, and all of us would find any number of them to be ludicrous or insupportable in some other way. But the general practice of members of Congress trying to get federal support for things in their district, absolutely nothing's wrong with that whatsoever. Again, if they weren't doing that, then the administration would be doing that according to their desires, and why should a member of Congress allow a member of the executive branch to substitute his judgement for his own in terms of what's best for his district?

**RITCHIE:** It always seems to be the smaller states that get the chairman of the appropriations committee, Arizona, West Virginia, Alaska.

**KENNEDY:** Less populated states.

**RITCHIE:** Yes, small in population, not small in geography, and to some degree the population growth in those states has been probably attributable to someone like Carl Hayden, who brought back federal money to Arizona for water projects and highway projects. Does being a member of the Appropriations Committee enhance your ability to bring projects back to your home state?

**KENNEDY:** Of course.

**RITCHIE:** As opposed to non-members of the committee?

**KENNEDY:** And I think you can go farther in that. It's not just the chairman but the general rank-and-file membership of the Appropriations Committee tends to be from states of less population. You'll certainly get the exception to that. Senator D'Amato of New York was a long time member of the committee, but he left and went on Finance when he had the chance. Senator [Dianne] Feinstein and Senator [Barbara] Boxer have sort of traded places on that. Senator [Phil] Gramm from Texas was on Appropriations for a while, but he too left when he had a chance to go to Finance. So I think a hindrance for a senator from a state with a lot of people getting on the Appropriations Committee is that there are too many constituencies to try to deal with. You cannot possibly help them all. So you wind up helping a few and disappointing a lot. I think that's why you'll find big-state senators, if you will, going to committees like Finance where you can deal with things in larger scope.

**RITCHIE:** That's interesting. I get the sense that people who are on the Appropriations Committee tend to be institutionally-oriented. It's not a flashy committee in a sense that committees dealing with legislation get that kind of publicity. Senators on the Appropriations Committee seem to me more structurally-oriented and institutionally. Is that a valid description?

**KENNEDY:** Yes, I think so.

**RITCHIE:** A lot of its work is done behind closed doors and isn't the type that's going to make headlines.

**KENNEDY:** And you're not going to produce big, important, long-lasting, major pieces of legislation that have your name on it. But year in and year out, you're going to get certain things done.

**RITCHIE:** What about the oversight role of Appropriations? I mean looking at where the money has been spent and calling administrators to account.

**KENNEDY:** Well, it's very much the hammer behind the door. I don't think it is as effectively utilized as it could or should be. Hearings are very tedious things, and it strikes me that, particularly in the Senate, hearings turn out to be less about attempting to understand what the agency is doing and why, and what it may have done right or wrong, than it is an opportunity for administration witnesses to give their speech and senators to give theirs. Senators don't devote the time to it that really effective oversight would require. But having said that, as I said at the outset, the hammer behind the door is always that the committee can recommend sharp reductions in programs it doesn't like. Just the threat of that, however rarely applied, tends to keep agencies in line. Of course, there's a constant conversation going on between the professional staff of the committee and the professional budget officers of the agencies. Those guys at the agencies know that things had better not get too far out of kilter, lest the committee exercise its power.

**RITCHIE:** There are often certain areas that a chairman will give his blessing to, being chairman can influence enormously. Senator Magnuson was interested in health issues and so the National Institutes of Health blossomed while he was chair of the Appropriations Committee. Did Senator Hatfield have a area that he took more interest in than others, that he kept an eye on?

**KENNEDY:** In his early years as chairman, I think a primary focus was finishing up, if you will, a lot of ongoing federal infrastructure projects in the Pacific Northwest, specifically in Oregon along the Columbia River and on the coast of Oregon. That's the whole series of federal dams on the Columbia and on the coast, and a whole series of harbor projects. As time wore on and he got those thing accomplished or saw them nearing completion, he devoted more of his time and effort to health issues and education issues. Now, of course, those interests too manifested themselves in the state of Oregon in the form of bricks and mortar. There's a considerable health sciences infrastructure now in Portland, that was there only in nascent form some twenty-four years ago, that he nourished and brought along. But, yes, clearly towards the end of his career those were his real priorities in the appropriations process.

**RITCHIE:** It must be a wonderful feeling to be sitting in that chair and realize that because you're there a lot of projects will get funded that might not have gotten funded otherwise, or would never have gotten the level of funding that you could bring to them. A real sense of direct correlation between your interests and your political abilities.

**KENNEDY:** Absolutely. I remember in '97, Senator Baker for whom I was then working in his law firm, agreed to go to Oregon. He and Mrs. Baker, Nancy Kassebaum Baker, were going to take a trip to Japan, and they agreed to stop in Portland, Oregon, on the way out, for Senator Baker to make some remarks at a fund-raising dinner for the Mark Hatfield Institute of Government at Portland State University. Riding into Portland in the car with Senator Baker, he remarked with some frequency about various structures, and projects, and the occasional building with the Mark Hatfield name on it. I think he gained a fresh appreciation of what it meant to sit in that chair and make recommendations for things that would happen. So, yes, it must be quite something over the years to do that, and then see the fruits of that eventually.

**RITCHIE:** Just like driving into West Virginia and seeing all of the Robert C. Byrd buildings.

**KENNEDY:** That would be a comparison.

**RITCHIE:** Well, thank you. I think this a good time to stop. I appreciate it.

**End of the Third Interview**